

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FREEDOM FROM RELIGION FOUNDATION, INC.

Plaintiff,

-VS-

CAUSE NO. 1-16: CV-00233

GOVERNOR GREG ABBOTT, in his official and individual capacities, and ROD WELSH, Executive Director of the Texas State Preservation Board, in his official capacity,

Defendants.

**DECLARATION OF PATRICK ELLIOTT IN SUPPORT OF
PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

I, Patrick Elliott, do hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct and based on my personal knowledge:

1. I am Senior Counsel for the Plaintiff, Freedom From Religion Foundation, Inc. (“FFRF”) and an attorney of record for the Plaintiff in this matter.
2. The vast majority of my professional expertise, experience as an attorney, and work product has involved violations of the First Amendment to the U.S. Constitution, including Establishment Clause, free exercise, and free speech issues.
3. I graduated from the University of Wisconsin Law School in May, 2009.
4. I was admitted to the State Bar of Wisconsin in June, 2009 and have been an active member of the State Bar of Wisconsin since. I have been a member of the Minnesota Bar since November, 2015. I am admitted to practice before the U.S. District Court for the Western District of Wisconsin, the U.S. District Court for the Eastern District of Wisconsin, the U.S. District Court for the Eastern District of Michigan, the U.S. District Court for the Western District of Texas, the

EXHIBIT D

U.S. Court of Appeals for the Third Circuit, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. Court of Appeals for the Seventh Circuit. I have, at all times, been a member in good standing in each bar and court to which I have been admitted.

5. I have been employed by the Freedom From Religion Foundation since February, 2010, during which time my duties have primarily included analyzing and processing complaints regarding violations of the First Amendment.

6. In my capacity as an attorney for FFRF, I have litigated First Amendment cases in federal courts across the country. In total I have been FFRF's lead attorney on more than ten cases, including:

- *Orsi v. Martin*, No. 4:18-cv-00343 (E.D. Ark. filed May 23, 2018) (Establishment Clause challenge to Ten Commandments display)
- *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Housing and Urban Development*, No. 1:18-cv-00114 (D.D.C. filed Jan. 18, 2018)(FOIA challenge to denial of fee waivers to non-profit, public interest groups)
- *FFRF v. The County of Lehigh*, No. 5:16-cv-04504, Dkt. 27 (E.D. Pa. Memorandum Opinion Sept. 28, 2017), (Holding that county seal featuring a Latin cross violated the Establishment Clause), *appeal docketed*, No. 17-3581 (3rd Cir.);
- *Hart v. Thomas*, No. 3:16-cv-00092 (E.D. Ky. filed Nov. 22, 2016) (Free speech challenge to personalized license plate censorship)
- *Deal v. Mercer County Bd. of Ed.*, No. 17-2429 (4th Cir. appeal filed Dec. 15, 2017) (Appeal of court order finding that parent did not have standing to challenge religious instruction in public schools under the Establishment Clause);
- *FFRF v. Connellsville Area Sch. Dist.*, 127 F.Supp.3d 283 (W.D. Pa. Memorandum Opinion Aug. 28, 2015) (Holding, in part, that school Ten Commandments monument violated the Establishment Clause);
- *FFRF v. New Kensington-Arnold Sch. Dist.*, No 2:12-cv-01319, Dkt. 106 (W.D. Pa. Order Jan. 4, 2017) (Order closing of case following successful appeal as to plaintiff's standing and settlement removing Ten Commandments monument in front of a public school)
- *Marshall v. City of Warren*, No. 2:14-cv-12872, Dkt. 50 (E.D. Mich. Judgment Feb. 23, 2015) (Issuing permanent injunction in a free speech challenge to restrictions on use of city hall atrium)
- *Nielson v. Sch. Dist. Five of Lexington & Richland Counties*, 3:12-cv-01427, Dkt. 122 (D. S.C. Order Dec. 1, 2014) (Order dismissing challenge to prayer at school graduations and school board meetings upon settlement)

- *Doe I v. Sch. Bd. of Giles Cnty.*, No. 7:11-cv-00435, Dkt. 62 (W.D. Va. Stipulation of Dismissal, July 2, 2012) (Resolving Establishment Clause challenge to Ten Commandments display in a public school)

7. I have coordinated, advised, and provided research and drafting support on numerous additional First Amendment cases on behalf of FFRF, most notably:

- *FFRF v. Brewster Cty.*, No. 4:16-014 (W.D. Tex. June 13, 2016) (issuing consent decree and order to remove cross decals from county law enforcement vehicles and concurrently dismissing Establishment Clause challenge to the decals);
- *FFRF v. Orange Cnty. Sch. Bd.*, 610 F.App'x 844 (11th Cir. 2015) (affirming district court dismissal of case on mootness grounds in free speech challenge to school literature distribution practices)
- *FFRF v. Office of Comm'r of Ins.*, No. 14-3429 (Dane Cty. Cir. Ct., Wis., Nov. 24, 2015) (awarding attorney fees and statutory damages to plaintiffs after challenge brought under state open records law);
- *Moss v. Spartanburg Cnty. Sch. Dist. Seven*, 683 F.3d 599 (11th Cir. 2012) (Holding that school system's program that awarded academic credit for off-campus religious instruction did not violate the Establishment Clause)
- *FFRF v. Town of Whiteville*, No. 1:11-cv-01374 (W.D. Tenn. Agreed Judgment, Aug. 8, 2012) (Enjoining town from installing stand-alone crosses on city hall property and awarding attorney fees)

8. In addition to litigation, I have also authored *amicus curiae* briefs filed with the Third Circuit Court of Appeals, Fourth Circuit Court of Appeals, Seventh Circuit Court of Appeals, Wisconsin's Dane County Circuit Court and the Wisconsin Court of Appeals. I have co-authored *amicus* briefs filed with the Eleventh Circuit Court of Appeals and the U.S. Supreme Court. All of these briefs concerned Establishment Clause and other First Amendment issues.

9. In addition to litigation work, I also regularly write legal demand and educational letters to various state and federal authorities and negotiate with those entities regarding Establishment Clause and other constitutional violations.

10. I have presented three continuing legal education (CLE) programs on First Amendment issues. In September 2016, I presented on "The Establishment Clause & Public

Schools" at a Legal Association for Women CLE event in Madison, Wisconsin. I also participated in a program entitled "Chipping Away the Wall of Separation – A Survey of Recent Supreme Court Cases Regarding the Establishment Clause" at a Legal Association for Women CLE event in August, 2014. In August of 2013, I presented a program titled "Deconstructing the First Amendment" at the School Law Conference of the South Carolina School Boards Association.

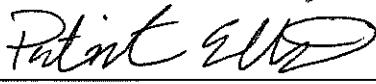
Attorney's Fees

11. An itemization of the hours I have worked on this case and the work performed is attached to this declaration as Exhibit A. It is a true and correct summary and cumulative total of the billable hours I have spent working on this case, which total 25 hours and 31 minutes.

12. Due to my experience and expertise in First Amendment law, and Establishment Clause and free speech law specifically, plus my understanding of the hourly rates typically charged by attorneys with similar experience and expertise, I believe that \$350 per hour is a reasonable hourly rate for my work in this case.

13. The hours dedicated to this matter were reasonable and inextricably intertwined with FFRF's free speech claims in that they arose from the same facts and were based on related legal theories.

Executed on this 3rd day of July, 2018.



Patrick Elliott

Exhibit A -

Attorney Elliott Time Log

Date	Description	Duration	Total time:	25.52
1/6/16	Meeting with Atty. Grover and Bolton regarding complaint	1:25:00	Rate:	\$350
1/6/16	Research government facility free speech forum	0:09:00	Total fees:	\$8,932.00
1/7/16	Research re: individual capacity claims against officials	0:28:00		
4/13/16	Meeting with Atty Grover and Bolton re: response to MTD	1:00:00		
4/25/16	Unattended display forum research	0:48:00		
6/23/16	Discuss proposed settlement terms with Atty. Grover and Annie Laurie Gaylor	0:50:00		
7/12/16	Review request for production with Atty. Grover and Annie Laurie Gaylor	0:20:00		
7/13/16	Review/analyze Answer and prepare for discovery	0:40:00		
7/13/16	Meeting with Atty Grover and Atty Bolton to discuss discovery	0:35:00		
8/2/16	Review of produced 2015 discovery docs	0:25:00		
8/8/16	Meeting with Atty Grover and Atty Bolton re: discovery and Mot. for Summary Judgment	0:15:00		
8/17/16	Review proposed stipulated fact changes	0:27:00		
8/18/16	Edits and comments on Mot. for Summary judgment	0:46:00		
8/22/16	Review and analysis on Def. Mot. for Summary Judgment	0:46:00		
8/23/16	Research for response to Def. Mot. for Summary Judgment	0:40:00		
8/23/16	Draft rebutal arguments in response to Def. Mot. For Summary Judgment	0:29:00		
1/13/17	Meeting with Atty Grover and Atty Bolton re: injunction	0:20		
1/13/17	Meeting with Atty Grover and Annie Laurie Gaylor re: injunciton	0:25		
3/21/17	Review scheduling and email re: settlement offer	0:19:00		
4/13/17	Discovery preparation: Interrogatory request research, deposition prep	0:36:00		
4/14/17	Meeting with Atty Grover and Atty Bolton re: depositions and discovery	0:25:00		
4/14/17	Drafting interrogs; review of permit record and production; drafting Davis questions	2:18:00		
5/4/17	Meeting with Atty Grover and Bolton re: discovery and judg on the pleadings	0:20:00		
5/25/17	Production of discovery documents and review	1:48:00		
7/12/17	Review and email re: scope and topics of 30(b)(6) deposition	0:10:00		
7/18/17	Review letter brief, email Atty. Bolton re: response	0:21:00		
7/18/17	Research re: letter brief & personal capacity, immunity , conduct required	0:28:00		
7/19/17	Meeting with Atty. Grover and Atty. Bolton re: depositions, case strategy	1:14:00		
7/24/17	Clay deposition review and analysis	0:35:00		
7/25/17	Clay deposition review and analysis	0:18:00		
7/28/17	Meeting with Atty Grover and Atty Bolton Re: Second Mot. For Summary Judgment	0:30:00		
10/13/17	Review order regarding motions for summary judgment & email to Atty. Bolton, client	0:27:00		
10/16/17	Meeting with Client Dan Barker and Atty. Grover re: Summary Judgment decision	0:15:00		
11/2/17	Meeting with Atty. Bolton & Atty. Grover re: appeal and settlement	0:30:00		
12/22/17	Researching atty fee motion and supporting documents for post-judgment	0:39:00		
2/5/18	Review proposed Motion for Entry of Judgment, Discuss with Atty. Grover	0:18:00		
4/6/18	Prepare Proposed Injunction	0:15:00		
4/6/18	Revise Proposed Injunction Draft	0:06:00		
4/18/18	Review proposed dismissal and order, email to Atty Bolton & Grover	0:16:00		
5/1/18	Review partial dismissal/settlement	0:12:00		
5/4/18	Discuss joint stipulation and entry of judgment with Atty. Grover	0:08:00		
6/11/18	Edits and analysis of proposed injunction	0:12:00		
6/15/18	Revisions to Judgment Motion	0:16:00		
6/20/18	Email to Atty Bolton, Atty Grover re: Judgment and Motion for Atty Fees	0:06:00		
6/28/18	Research re: Atty Fees & Preparing Declaration in Support of Motion for Atty Fees	0:36:00		
6/28/18	Preparing Declaration in Support of Motion for Attorney Fees	1:05:00		
	Total (h:m)	25:31:00		